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ALEXANDER L. STEVAS
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No. 84-296

IN THE
Supreme Court of the United States

OCTOBER TERM, 1984

BRIGGS TRANSPORTATION COMPANY,
Petitioner,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and all of its affiliated unions; CHICAGO TRUCK DRIVERS, HELPERS AND WAREHOUSE WORKERS UNION (INDEPENDENT); INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO and all of its local unions; and LOCAL UNION NO. 710 (CHICAGO) affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court of Appeals for the Eighth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Contrary to Petitioner, Respondents believe that this case presents only the following issue:

May a court of the United States, consistent with the Norris-LaGuardia Act, enjoin a union's members from engaging in peaceful picketing, patrolling, speech and other forms of publicity designed to protest their employer's unilateral cuts in wages, fringe benefits and other terms and conditions of employment following a bankruptcy court's rejection of a collective bargaining agreement to which the employer was signatory?

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is reported at 739 F.2d 341 (8th Cir. 1984). The opinion of the district court is not yet officially reported.

JURISDICTION

The judgment of the United States Court of Appeals for the Eighth Circuit was entered on July 17, 1984. The Petition for a Writ of Certiorari was filed on August 24, 1984. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

STATUTES INVOLVED

29 U.S.C. §101

Issuance of restraining orders and injunctions; limitation; public policy

No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.

29 U.S.C. §104

Enumeration of specific acts not subject to restraining orders or injunctions

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

* * *

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peacably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

29 U.S.C. §113

When used in this chapter, and for the purposes of this chapter—

* * *

(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

11 U.S.C. §105

(a) The Bankruptcy Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this Title.

STATEMENT OF THE CASE

I. Nature of the Case

Briggs Transportation Co. ("Briggs") is a bankrupt trucking company which filed a Chapter 11 petition in reorganization on January 25, 1983. Approximately 300 of Briggs 400 employees are union members, the bulk being Teamster members employed pursuant to the terms of the National Master Freight Agreement and applicable Supplemental Agreements.

On March 30, 1984, the United States Bankruptcy Court for the District of Minnesota rejected labor agreements to which Briggs was signatory, including the National Master Freight Agreement. The very next day, Briggs unilaterally slashed wages and fringe benefits of its unionized employees by more than $4.00 per hour and imposed far less favorable non-monetary terms and conditions of employment upon the workers.

Several days later, the International Brotherhood of Teamsters ("Teamsters Union" or "Union") authorized a strike against Briggs to protest those unilateral slashes. Peaceful, primary picket lines were established at every Briggs terminal. When Briggs requested negotiations, the Teamsters Union terminated the strike.

The negotiations were unsuccessful. Briggs then brought this action, seeking to enjoin an anticipated strike and, *inter alia,* any "interference or threat of interference with the normal business operations of Briggs Transportation Co."

United States District Judge Paul Magnuson conducted a hearing on Briggs' request for a temporary injunction on April 24, 1984. Judge Magnuson did not permit oral testimony but, on April 25, 1984, rejected Briggs' request for a preliminary injunction in all respects. Judge Magnuson found that Briggs' request involved a "labor dispute" within the meaning of the Norris-LaGuardia Act, 29 U.S.C. §§101-115 (1982), and that nothing in the legislative history of the Bankruptcy Reform Act of 1978 indicated that, by its passage, the Congress had impliedly repealed the provisions of the Norris-LaGuardia Act which deprive federal courts of jurisdiction to issue injunctions against peaceful picketing and concerted activity arising out of a "labor dispute".[1]

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[1] App. A-13. "App." refers to appendix to the petition for certiorari.

Briggs perfected an expedited appeal to the United States Court of Appeals for the Eighth Circuit which, on July 17, 1984, affirmed the district court's judgment in all respects. The court explicitly noted that nothing in the Bankruptcy Code, its legislative history, or the decisions of other circuit courts of appeals indicated any intention to void the plain language of the Norris-LaGuardia Act. Finally, the court of appeals found that this Court's *Bildisco*[2] decision was inapposite since it did not discuss the Norris-LaGuardia Act and could not be read to imply the repeal of that Act in bankruptcy cases. (739 F.2d at 343-344) Therefore, the court of appeals refused to enjoin the peaceful collective activities of Briggs' employees and their unions.

II. The Pertinent Facts

Briggs is a trucking company engaged in both interstate and intrastate transportation of motor freight. The International Brotherhood of Teamsters and its affiliated local unions represent the majority of the approximately 300 of Briggs employees who are organized. Nearly all were covered by the National Master Freight Agreement and applicable Supplemental Agreements which were due to expire in 1985.

In August of 1983, Briggs proposed massive cuts in wages, fringe benefits, and other terms and conditions of employment for Teamster members. Briggs sought to slash the wages of its employees by more than $4.00 per hour, to inflict additional cuts in fringe benefits, such as vacations, sick leave, and personal holidays, and to eliminate many other terms and conditions of employment under the union contract, including some

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[2] *N.L.R.B. v. Bildisco & Bildisco*, ____U.S.____, 104 S.Ct. 1188, 79 L.Ed.2d 482 (1983).

of its crucial, non-monetary provisions, such as seniority.[3] When Union leaders rejected Briggs' proposals, Briggs filed a motion to reject its collective bargaining agreements in the bankruptcy court.

On March 30, 1984, Bankruptcy Judge Robert J. Kressel approved rejection of the contracts. Briggs immediately unilaterally slashed its employees' wages, fringe benefits and working conditions to the level which it had unsuccessfully sought in August of 1983. The Teamsters Union responded by calling a strike which shut down Briggs' operations by peaceful picketing activities. There were no arrests or violent activities.[4] When Briggs agreed to postpone those unilateral slashes in pay and fringe benefits pending negotiations, the Union returned its members to work.

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[3] TR 31-32. At the April 24 hearing, Judge Magnuson did not permit oral testimony. Instead, due to the nature of the issues in the case, the court informed counsel for the Teamsters Union that his representations as to factual matters would be considered "taken [ ] to be true and I think the record should indicate that, that the Court is just accepting your offer of proof..." TR 64. Counsel for Briggs did not object to this procedure. No more formal offer of proof was needed. See, e.g., *Harris v. Smith,* 372 F.2d 806, 815 (8th Cir. 1967); *Movie Systems, Inc. v. MAD Minneapolis Audio Distributors,* 717 F.2d 427, 431-432 (8th Cir. 1983). Therefore, we shall refer to various portions of the transcript of the oral argument in the presentation of the facts.

[4] Briggs did not claim that any arrests had been made or that the local authorities could not control the picketing and other forms of publicity. See 29 U.S.C. §107(c). Briggs' moving papers identified only one allegedly violent action, which the Teamsters Union vigorously disputed (TR 31). ("TR" refers to the transcript of the oral argument before Judge Magnuson.) Briggs' counsel also disowned any claim that the St. Paul terminal had, as stated in its complaint, been "barricaded" (TR 25).

There is no record evidence of further "harassment". As the court of appeals noted, Briggs "candidly recognizes" that it does not meet the Norris-LaGuardia Act's stringent test for injunctive relief. 739 F.2d at 343. What Briggs really seeks is to enjoin peaceful concerted activity.

On April 12, 1984, Briggs met with Union leaders but remained inflexible. Although the Teamsters Union made various proposals which would have altered the pay to its members by several dollars per hour, Briggs stubbornly insisted upon its unilaterally imposed terms and conditions of employment. At the end of the meeting, the Union offered to meet again if Briggs wished to negotiate or deviate from its original proposal.[5] Briggs responded by filing this lawsuit for an injunction against any "interference or threat of interference" with Briggs, its employees, customers, suppliers and others.

REASONS FOR DENYING THE WRIT

I. Summary of Argument

This lawsuit involves a "labor dispute" within the meaning of the Norris-LaGuardia Act, 29 U.S.C. §113(c), since it involves a "controversy concerning terms or conditions of employment". Every federal court which has considered the issue has held that the Norris-LaGuardia Act deprives federal courts of jurisdiction to enter injunctions restraining peaceful picketing and publicity against bankrupt employers. Every federal court wnich has considered the issue has held that the Bankruptcy Reform Act of 1978 did not, based upon a detailed examination of its legislative history, change the application of the Norris-LaGuardia Act to this case and authorize such injunctive relief. Finally, this Court's *Bildisco* decision is inapposite because it construed a different federal statute and did not concern the Norris-LaGuardia Act.

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[5] TR 31-32.

II. Neither the Decision Nor the Record Below Raises the Question Presented in the Petition.

Petitioner's statement of the Question Presented is designed to erect and demolish a strawman which will divert the Court's attention from the real nature of this case. This case does not involve union activity "which has been undertaken to nullify [a] bankruptcy court's prior order."[6] Nor does it involve activity which constitutes any unlawful interference with Briggs' business operations, by way of violence or otherwise. Rather, as the court of appeals explicity noted, this case involves a refusal "to enjoin the peaceful collective activities of Briggs' employees and their elected representatives", 739 F.2d at 344; and, as the court of appeals also explicity noted, "Briggs candidly recognizes that it is asking for relief which would be unavailable to it in the absence of its Chapter 11 filing and the Bankruptcy Court's Order authorizing the abrogation of its collective bargaining agreements with the Union." 739 F.2d at 343. In the words of the Eighth Circuit,

> "The principal question is whether the logic of the Supreme Court's decision in *Bildisco* requires injunctive relief from legitimate strike activities and peaceful picketing by Union members who do not wish to accept the abrogation of their contracts and fail to negotiate new agreements with employers attempting Chapter 11 reorganization, even where such relief would otherwise be beyond the jurisdiction of the District Court under the Norris-LaGuardia Act." *Id.*

In other words, the plain language of the Norris-LaGuardia Act governs this case and nothing in the case law or the legislative history compels a contrary result or a departure from that Act's literal mandate.

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[6] Petition for Certiorari, Question Presented.

III. The Court of Appeals Correctly Held that the Norris-LaGuardia Act Deprived the Courts of the United States of Jurisdiction to Enjoin the Union's Purely Peaceful Activity.

The Norris-LaGuardia Act defines the term "labor dispute" to include "any controversy concerning terms or conditions of employment..." 29 U.S.C. §113(c). This Court has recently recognized the fact that this "statutory definition itself is extremely broad" and that the Act itself was designed to prevent federal judges from becoming involved in "the very scrutiny of 'legitimate objectives' that Congress intended to prevent when it passed the Act." *Jacksonville Bulk Terminals v. International Longshoremen's Association,* 457 U.S. 702, 712, 719-720 (1982) (footnotes omitted). By passage of the Norris-LaGuardia Act, "Congress was intent upon taking the federal courts out of the labor injunction business..." *Columbia River Packers Association v. Hinton,* 315 U.S. 143, 147 (1942.[7]

Every court of appeals which has considered the issue has decided that a case involving picketing against bankrupt employers arises out of a "labor dispute" within the meaning of Norris-LaGuardia. See, *In re Crowe & Associates, Inc.,* 713 F.2d 211, 213 (6th Cir. 1983) (strike to collect pre-petition delinquencies to fringe benefit funds involves a labor dispute under Norris-LaGuardia); *In re Petrusch,* 667 F.2d 297, 299 (2d Cir. 1981), *cert. denied* 456 U.S. 974 (1982) (strike to collect pre-petition debts to fringe benefit funds "fits squarely into the Norris-LaGuardia Act's definition of labor dispute"); *In re Third Avenue Transit Corp.,* 192 F.2d 971, 973 (2d Cir. 1951) (strike to compel debtor to sign union contract involves labor dispute under Norris-LaGuardia).

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[7] Accord, e.g., *Marine Cooks & Stewards v. Panama S.S. Co.,* 362 U.S. 365, 369 (1960).

Under the Norris-LaGuardia Act, numerous federal courts have held that they lack jurisdiction to issue injunctions restraining peaceful picketing against bankrupt employers. *In re Crowe & Associates, Inc., supra; In re Petrusch, supra; In Re Third Avenue Transit Corp., supra; Truck Drivers Local Union No. 807 v. Bohack Corp.*, 541 F.2d 312, 317 (2d Cir. 1976), *cert. denied* 439 U.S. 825 (1978) (strike to compel debtor to abide by collective bargaining agreement may not be enjoined under Norris-LaGuardia Act); *International Brotherhood of Teamsters v. Quick-Charge, Inc.*, 168 F.2d 513 (10th Cir. 1948) (Norris-LaGuardia prohibits injunction against strike to publicize and protest alleged unfair labor practices of the debtor); *Anderson v. Bigelow*, 130 F.2d 460 (9th Cir.), *cert. denied* 317 U.S. 690 (1942) (Norris-LaGuardia prohibits injunction against strike to compel federal receiver to sign contract); *N.L.R.B. v. Brada Miller Freight Systems, Inc.*, ____ F.Supp. ____, 109 Lab. Rel. Ref. Man. (BNA) 2533, 2536 (N.D.Ala. 1981) (Norris-LaGuardia Act prohibits injunctions against "interfering, in any way, with the operation of the company's business and its normal flow of traffic").[8]

The conclusion that the Norris-LaGuardia Act prohibits the relief requested here is bolstered by the fact that the Bankruptcy Reform Act of 1978 never discussed or in any way implied a change in the federal anti-injunction policy expressed in the Norris-LaGuardia Act. *In re Petrusch*, 667 F.2d 297, 299-300 (2d Cir. 1981), *cert. denied* 456 U.S. 974 (1982); *In re Crowe & Associates, Inc.*, 713 F.2d 211, 214 (6th Cir. 1983); *N.L.R.B. v. Brada Miller Freight Systems, Inc.*, ____ F.Supp. ____, 109

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[8] The fact that the picketing may cause the company's financial collapse does not provide the jurisdiction removed by Norris-LaGuardia, since "the labor laws recognize that a strike may drive an employer out of business." *In re Crowe & Associates, Inc., supra*, 713 F.2d at 216; *accord, In re Petrusch, supra*, 667 F.2d at 297. This Court has also recognized that a union's demands may be more than an employer can pay. See, *United Mine Workers v. Pennington*, 381 U.S. 657, 665 n. 2 (1965).

Lab. Rel. Ref. Man. (BNA) 2533, 2539 (N.D.Ala. 1981); *Truck Drivers Local Union No. 807 v. Bohack Corp.*, 541 F.2d 312, 318 (2d Cir. 1976), *cert. denied* 439 U.S. 825 (1978); *In re Third Avenue Transit Corp.*, 192 F.2d 971, 973 (2d Cir. 1951); *International Brotherhood of Teamsters v. Quick-Charge, Inc.*, 168 F.2d 513, 516 (10th Cir. 1948); *Anderson v. Bigelow*, 130 F.2d 460, 462, 464 (9th Cir.), *cert. denied* 371 U.S. 690 (1942).

Briggs really seeks to have this Court disregard the Norris-LaGuardia Act's plain wording, legislative history and breadth, as well as the consistent interpretations and applications by every court of appeals which has considered the issue.

Finally, this Court's *Bildisco* decision is plainly inapposite since it never cited the Norris-LaGuardia Act; did not discuss the Norris-LaGuardia Act; did not discuss any cases which construed the Norris-LaGuardia Act; did not criticize any of the extensive case law cited in this brief regarding the Norris-LaGuardia Act; accommodated an entirely different statute with a different legislative history; and treated an entirely different subject.

In summary, we respectfully submit that the Eighth Circuit was correct as a matter of law in refusing to overturn the district judge's exercise of discretion in denying the injunction sought here as contrary to the plain language of the Norris-LaGuardia Act. The Eighth Circuit's decision was consistent with decisions of this Court construing the Norris-LaGuardia Act and decisions of every court of appeals which has considered this or a related issue.

CONCLUSION

This petition presents a case of no great difficulty or novelty. The true issue involved is a very simple one — whether the Norris-LaGuardia Act can be ignored by a federal court absent any facts falling within its specific exceptions. The Eighth Circuit was plainly correct and its decision should stand. Therefore, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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